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13 WEST INTERACTIVE CORP.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 PHOENIX SOLUTIONS, INC., a
18 Maryland corporation,

19 Plaintiff and Counterclaim-
20 Defendant,

21 v.

22 WEST INTERACTIVE CORP., a
23 Delaware corporation,

24 Defendant and Counterclaim-
25 Plaintiff.

Case No. 2:09-cv-08156-MRP (SSx)

REQUEST FOR JUDICIAL NOTICE

Date: July 15, 2010

Time: 1:30 PM

Ctrm: 12

Judge: Hon. Mariana R. Pfaelzer

1 Pursuant to Rule 201 of the Federal Rules of Evidence, Defendant West Interactive
2 Corporation (“West”) hereby respectfully requests that, in connection with its (1) Motion
3 For Summary Judgment Of Invalidity Regarding The ’854 Patent (Dkt. No. 35), (2)
4 Motion For Summary Judgment Of Invalidity Regarding The ’640 Patent (Dkt. No. 31)
5 and (3) Motion For Summary Judgment Of Invalidity Regarding The ’431 Patent (Dkt.
6 No. 29), each filed and served on June 1, 2010, the Court take judicial notice of the fact
7 that each of the documents identified below was published in a journal, conference
8 proceeding or other periodicals as of the date of its publication. West does not request
9 this Court to take judicial notice that the facts reported in the documents are true, but
10 rather that these documents were published in a periodical as of the date of publication.
11 West makes this request solely to remove any doubt that the references cited and attached
12 to the Declaration of Christopher Schmandt Regarding the MIT Galaxy System filed and
13 served on June 1, 2010, Dkt. No. 40 (“Schmandt Declaration”) were published in a
14 periodical and to provide the relevant publication information for each such reference—
15 including the author, article title, periodical title, and date of publication—to the extent
16 that information was not apparent from the face of the document.

17 Under Rule 201(d) Courts shall take judicial notice of adjudicative facts if
18 requested by a party and supplied with the necessary information. “A judicially noticed
19 fact must be one not subject to reasonable dispute in that it is either (1) generally known
20 within the territorial jurisdiction of the trial court or (2) capable of accurate and ready
21 determination by resort to sources whose accuracy cannot reasonably be questioned.”
22 Fed. R. Evid. 201(b). Judicial notice may be taken at **any** stage of the proceeding (Fed. R.
23 Evid. 201(f)) including after a party has filed its opening motion.

24 Each of the documents identified below is an article from a published periodical.
25 The publication and contents of these documents are “not subject to reasonable dispute in
26 that . . . [they are] capable of accurate and ready determination by resort to sources whose
27 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Specifically, these
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1 facts are easily verifiable by reviewing the documents and confirming sources and dates
2 of the publications.

3 A court may take judicial notice of the existence of a body of scientific literature.
4 *See Browning-Ferris Industries of South Jersey, Inc. v. Muszynski*, 899 F.2d 151, 161 (2d
5 Cir. 1990), *overruled on other grounds*. In fact, many courts have taken judicial notice of
6 the type of facts at issue in this request. *See, e.g., Moonrunners L.P. v. Time Warner, Inc.*,
7 No. 2:05-cv-01361-GAF, 2005 U.S. Dist. LEXIS 41244, at *34 n.12 (C.D. Cal. June 17,
8 2005) (“The court may take judicial notice of the fact that an article was published in a
9 newspaper or periodical”); *Heliotrope General, Inc. v. Ford Motor Co.*, 189 F.3d 971, 981
10 n. 18 (9th Cir. 1999) (“We take judicial notice that the market was aware of the
11 information contained in news articles submitted by the defendants”); *Benak ex rel.*
12 *Alliance Premier Growth Fund v. Alliance Capital Mgmt. L.P.*, 435 F.3d 396, 401 n. 15
13 (3d Cir. 2006) (holding that district court did not err in taking judicial notice of newspaper
14 articles because “[t]hey serve only to indicate what was in the public realm at the time, not
15 whether the contents of those articles were in fact true”); *In re Merrill Lynch & Co.*
16 *Research Reports Sec. Litig.*, 289 F. Supp. 2d 416, 425 n.15 (S.D.N.Y. 2003) (“The Court
17 may take judicial notice of newspaper articles for the fact of their publication without
18 transforming the motion into one for summary judgment”); *In re Sterling Foster & Co.*,
19 *Sec. Litig.*, 222 F. Supp. 2d 312, 321 (E.D.N.Y. 2002) (taking judicial notice of newspaper
20 articles to show media attention to defendant’s alleged conduct), *vacated and remanded*
21 *on other grounds by Levitt v. Bear Stearns & Co., Inc.*, 340 F.3d 94 (2d Cir. 2003);
22 *Schwenk v. Kavanaugh*, 4 F. Supp. 2d 116, 118 (N.D.N.Y. 1998) (taking judicial notice of
23 the fact that a particular article appeared on the front page of the New York Law Journal);
24 *Cerasani v. Sony Corp.*, 991 F. Supp. 343, 354 n.3 (S.D.N.Y. 1998) (taking judicial notice
25 of the widespread newspaper coverage of the trial); *Cosmas v. Merrill Lynch & Co.*, 92-
26 cv-06560-KC, 1993 U.S. Dist. LEXIS 21323, at *4 n.2, 1993 WL 800778, at *2 n.2
27 (S.D.N.Y. Jul. 1, 1993) (taking judicial notice of the fact that stock prices were listed in
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1 the Wall Street Journal); *Show-World Center, Inc. v. Walsh*, 438 F. Supp. 642, 655
2 (S.D.N.Y. 1977) (taking judicial notice of widespread publicity via newspaper and
3 television news).

4 Therefore, West respectfully requests this Court to take judicial notice that each of
5 the following documents was published in a periodical as of the date of publication:

6 1. Victor W. Zue, "Conversational Interfaces: Advances and Challenges,"
7 *Proceedings Eurospeech*, Rhodes, Greece, KN09-KN18 (1997), attached to the Schmandt
8 Declaration as Exhibit B.

9 2. David Goddeau et al., "GALAXY: A Human-Language Interface to On-Line
10 Travel Information," *Proceedings ICSLP*, Yokohama, Japan, 707-710 (1994), attached to
11 the Schmandt Declaration as Exhibit C.

12 3. Helen Meng et al., "WHEELS: A Conversational System in the Automobile
13 Classifieds Domain," *Proceedings ICSLP*, Philadelphia, PA, 542-545 (1996), attached to
14 the Schmandt Declaration as Exhibit D.

15 4. Stephanie Seneff and Joseph Polifroni, "A New Restaurant Guide
16 Conversational System: Issues in Rapid Prototyping for Specialized Domains,"
17 *Proceedings ICSLP*, Philadelphia, PA, 665-668 (1996), attached to the Schmandt
18 Declaration as Exhibit E.

19 5. Chao Wang, *Porting the Galaxy System to Mandarin Chinese*, Massachusetts
20 Institute of Technology, Dept. of Electrical Eng'g and Computer Science (1997), attached
21 to the Schmandt Declaration as Exhibit F.

22 6. Steven C. Lee and James R. Glass, "Real-time Probabilistic Segmentation for
23 Segment-Based Speech Recognition," *Proceedings ICSLP*, Sydney, Australia, 1803-1806
24 (1998), attached to the Schmandt Declaration as Exhibit G.

25 7. Victor Zue, "Towards Systems That Understand Spoken Language," *IEEE*
26 *Intelligent Systems*, vol. 9, no. 1, 51-59 (Feb. 1994), attached to the Schmandt Declaration
27 as Exhibit H.

1 8. Stephanie Seneff, "TINA: A Natural Language System for Spoken Language
2 Applications," *Computational Linguistics*, vol. 18, no. 1, 61-86 (March 1992), cited at ¶ 2
3 of the Schmandt Declaration.

4 9. David Goodine et al., "Full integration of speech and language understanding
5 in the MIT spoken language system," *Proceedings Eurospeech*, Genova, Italy, 845-848,
6 (1991), cited at ¶ 2 of the Schmandt Declaration.

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8 Dated: June 16, 2010

Respectfully submitted,

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11 Bv: /s/ Rvan M. Kent

Ryan M. Kent

12 Attorneys for Defendant and Counterclaim
13 Plaintiff WEST INTERACTIVE CORP.
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